

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
DAVID E. PIRTLE, SR. and)	CASE NO. 04-66068 JPK
CAROLYN ANN PIRTLE,)	Chapter 13
)	
Debtors.)	

ORDER FOR HEARING

On February 13, 2008, a hearing was held with respect to the debtors' objection to claim #17 of the Lake County Treasurer. The debtors both appeared in person, and by counsel Rosalind G. Parr. It was the Court's intent to seek to obtain the participation at the hearing of an attorney for the Lake County Treasurer; however, the Court did not provide notice of the hearing to that counsel.

The debtors and Attorney Parr address the circumstances of the objection to the Court. As was stated in the Court's order entered on January 17, 2008, the debtors did not effectuate service of process upon the claimant, but the matters presented by the debtors at the February 13, 2008 hearing are so convoluted that the Court will not require the debtors to effectuate service of the objection to claim #17 at this time.

The debtors stated that property to which claim #17 refers is their residence at 2160 Marshall Place, Gary, Indiana. This property is comprised of four lots, which the debtors designated as lot numbers 12, 13, 14 and 15. A house and an attached garage, according to the debtors, is located on lot numbers 12 and 13; several outbuildings (sheds as the debtors describe them) are located on lots 14 and 15. The debtors stated that to the best of their knowledge this property is subject to an escrow arrangement with the mortgage lender who provided financing for it, and the real property taxes owed to the Lake County Treasurer have at all times been paid with respect to these four lots and are believed to be current. The proof of claim refers specifically to the debtors' residence, and it specifically asserts a claim for real

property taxes for 2005 payable in 2006 – a claim which is clearly disallowable as a pre-petition claim and could only be allowed if the Lake County Treasurer had requested its allowance, and been granted its allowance, pursuant to 11 U.S.C. § 503(b)(1)(B), which is not the case here.

On January 14, 2008, the Lake County Treasurer filed five “amended” claims, each stating a different amount of asserted liability, docketed as claim numbers 17-2, 17-3, 17-4, 17-5 and 17-6.¹ The Court has not reviewed these claims to ascertain the properties to which they are contended to relate at this time.

This matter is further complicated by the fact that claim #17 was late-filed, and thus upon proper objection, it is not an allowable claim in this bankruptcy case. If disallowed as untimely, any amendments to claim #17 will not be allowable claims in this case, either. However, disallowing claims on property which the debtors have sought to retain under their Chapter 13 plan will not do the debtors any favors.

The case is further complicated by the fact that even if property owned by the debtors was surrendered by them under their Chapter 13 plan, and the mortgage holder with respect to that property subsequently foreclosed on it in a manner which changed the ownership of the property to a person or entity other than the debtors, until the ownership actually changed, Indiana real property tax law provides that an owner of property on the assessment date for taxes for a particular year is personally liable for those taxes. If the property is in fact surrendered by a plan, the debtors need not provide for the real property taxes under 11 U.S.C. § 1325(a)(5). However, 11 U.S.C. § 507(a)(8)(B) provides for a priority claim for “a property tax incurred before the commencement of the case and last payable without penalty after one year

¹ The Court notes that these claims were filed under the electronic authorization of a former Lake County Treasurer’s employee, Faye Givens. The Court knows that Faye Givens is no longer an employee of the Lake County Treasurer’s Office. If the Lake County Treasurer desires to continue to file electronic claims it will be necessary for the office to obtain an authorization for someone other than Faye Givens to do so.

before the date of the filing of the petition". Thus, the Lake County Treasurer may have had an assertable priority claim with respect to the debtors' personal liability for real property taxes even for property which they did not retain pursuant to the terms of their Chapter 13 plan; however, because the Lake County Treasurer's claim was late-filed, the debtors may be able to discharge any such claim upon successful completion of their Chapter 13 plan.

Finally, the Chapter 13 Trustee has paid the Lake County Treasurer \$7,117.03 with respect to claim #17, and the actual tax liability to which this payment should be applied remains as murky as the Ganges River during the monsoon season.

All of the foregoing would make a wonderful law school final examination question in a course which addressed the payment of real property taxes under the Bankruptcy Code with reference to Indiana's real property tax laws. That is not a productive exercise. It is the Court's intent to begin to sort out this mess with the participation of the attorney for the Lake County Treasurer and the resources of the Lake County Treasurer's Office, an intent which the Court sought to do by means of its order scheduling the hearing for February 13, 2008, but which intent was not effected due to lack of service on that attorney.

There is technically nothing before the Court which would require the attorney for the Lake County Treasurer to appear before the Court for a hearing. However, in view of the accommodations of that office in the past, the Court anticipates that the Treasurer of Lake County is as interested in resolving this mess as the debtors and the Court are, and that the participation will be provided.²

IT IS ORDERED that a telephonic conference will be held on **March 27, 2008, at 11:15**

² The Court is also aware that an employee of the Lake County Treasurer's Office was engaged in conduct which caused the filing of claims in bankruptcy cases to not accurately reflect liabilities of the debtors in whose cases claims were filed, and although this case does not appear to be subject to the concerns arising from that practice, the Court isn't certain at this point that this is a "clean" case in that regard, either.

A.M. in which counsel for the debtors and a representative of the Chapter 13 Trustee's Office will participate, and in which it is hoped that the attorney for the Lake County Treasurer will participate as well.

Dated at Hammond, Indiana on March 12, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtors, Attorney for Debtors

Trustee, US Trustee

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